

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Nelson L. Bruce, Propria Persona
Sui Juris
Plaintiff

-VS-

NIAGARA CAPITAL ASSOCIATES INC.,
Parties both known and unknown, ect. al.

Defendant(s)

Case No.: 2:18-cv-00332-RMG-MGB

COMPLAINT
JURY DEMAND

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COMPLAINT

Plaintiff, Nelson L. Bruce, individually, hereby sues Defendant(s) for violations of the Telephone Consumer Protection Act (TCPA) 47 USC § 227(b)(1), 47 USC § 227(b)(1)(B), 47 USC § 227(b)(1)(A)(iii).

PRELIMINARY STATEMENT

- 1) This is an action for Statutory Damages as relief brought by Plaintiff against Defendant(s) for violations of the Telephone Consumer Protection Act (TCPA), which prohibits the use of automatic telephone dialing systems (ATDS) and the use of artificial or prerecorded voice to deliver a message to a residential phone or to call or text cellular phones without the "prior express consent" of the called party to make such calls. **See 47 USC § 227(b)(1), 47 USC § 227(b)(1)(B), 47 USC § 227(b)(1)(A)(iii).**
- 2) Upon belief and information, Plaintiff contends that many of these practices are widespread for some or all of the Defendant(s). Plaintiff intends to propound discovery from Defendant(s) identifying phone records from January 1, 2015 to January 31, 2016 because Defendant(s) never had consent from Plaintiff to call his cellular phone, or leave artificial prerecorded voice messages and the Plaintiff wants to discover who the Defendant(s) service provider is where the Defendant(s) phone number is registered under which was used to dial the Plaintiff and these

other individuals who have suffered similar violations. Upon discovery, Plaintiff will Subpoena Defendant(s) phone service provider to identify what capabilities the numbers(s) used to dial the Plaintiff's cellular phone and/or any other phone has if Defendant(s) refuses to provide this information as requested during discovery.

- 3) Plaintiff contends that the Defendant(s) have violated such laws by repeatedly harassing Plaintiff in attempts to contact some other individual regarding a returned check.

JURISDICTION AND VENUE

- 4) Jurisdiction of this Court arises under 47 U.S.C. §227(b)(3), and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367.
- 5) Venue is proper pursuant to 28 U.S.C. §1391(b). Venue in this District is proper in that the Plaintiff is domiciled here, the Defendant(s) transact business here, and the conduct complained of occurred here.
- 6) This is an action for damages which exceed \$10,000.

PARTIES

- 7) Plaintiff, Nelson L. Bruce, is a natural man of the age of majority and domiciled in the State of South Carolina.
- 8) Upon information and belief NIAGARA CAPITAL ASSOCIATES, INC. (Defendant), is a Domestic corporation, registered in the State of New York doing business in South Carolina.

FACTUAL ALLEGATIONS

- 9) From June 1, 2015 thru July 31, 2015, Defendant(s) violated the TCPA by using an automatic telephone dialing system to call Plaintiff's cellular phone.
- 10) Plaintiff has never done business with or has given Defendant(s) consent or express permission to call Plaintiffs cellular phone.
- 11) Plaintiff spoke with members of the Defendant Company twice, once with John Jacob and twice with another individual of the company who both assured Plaintiff that they both would remove

- Plaintiff's name and number off of their list as a reference for the individual that they were attempting to reach regarding a debt. Since then Niagara Capital Associates continued to violate 47 U.S.C. § 227 From June 1, 2015 thru July 31, 2015.
- 12) Defendant(s) violated the TCPA by calling Plaintiff's phone line 7 times that he has recorded which include cellular phones and other phones which rang at the same date and time using an auto dialer with no prior express permission given by Plaintiff.
- 13) Plaintiff has screen shots of some of the calls stored in his cell phone identifying the phone number used to call Plaintiff, the date and time of the calls. Can be provided as **Exhibit – A Evidence** upon request.
- 14) Plaintiff has multiple voicemail recordings with automated messages from the Defendant(s) which verifies that the Defendant(s) used an automated dialing service and has the capabilities of an automated dialing system which can be provided and played during trial and used as valid evidence which will also show that the calls came from Defendant(s) phone number 716-402-1123.
- 15) Plaintiff has been on the "National Do not Call List" since June 29, 2012, Evidence of this can be provided as **Exhibit – B Evidence** upon request.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER

PROTECTION ACT 47 U.S.C. §227(b)(1), (b)(1)(B), (b)(1)(A)(iii) BY DEFENDANT(S)

- 16) Plaintiff alleges and incorporates the information in paragraphs 1 through 15.
- 17) Defendant(s) has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A), and 47 U.S.C. §227(b)(1)(B) by using an artificial or pre-recorded message and using an automatic telephone dialing system (ATDS) to call the Plaintiff's number, which is assigned to a cellular telephone service or other phone residential service.

- 18) Defendant(s) has committed 7 separate violations of 47 U.S.C. §227(b)(1)(A) that Plaintiff knows of and Plaintiff is entitled to damages of \$1,500 per violation starting June 1, 2015 pursuant to 47 U.S.C. §227(b)(3)(C).
- 19) Defendant(s) has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A) and has never had consent to contact the Plaintiff and are now subject to treble damages pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C) as they were intentional. Plaintiff answered 1 or 2 of the calls to see why the Defendant was calling the Plaintiff.
- 20) Plaintiff sent out two notices of an intent to sue to Defendant to try to settle this matter outside of court, one with a certified tracking number of 7008 1140 0000 5363 1645 of which was returned to Plaintiff as "Not Deliverable as Addressed," which is the address located on the NY Secretary of State files for the Defendants contact information. The second notice was sent certified with a tracking number of 7015 1730 0001 5397 2911 and received by Defendant on January 19, 2016 giving the Defendant 10 days to respond and settle this matter at hand before seeking my remedy in a court of law. As of the date of this filing there has been no prior response from Defendant regarding this documents sent beforehand. Can be provided as **Exhibit – C Evidence** upon request.

WHEREFORE, Plaintiff demands judgment for damages against the Defendant(s) for actual or statutory damages, court fees and costs.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable as a matter of law.

Respectfully submitted, this 5 of February, 2018.

Respectfully Submitted,

"Without Prejudice"

Nelson L. Bruce 2-5-2018

Nelson L. Bruce, Propria Persona, Sui Juris

"All Rights Explicitly Reserved and Retained"

U.C.C. 1-207/1-308, 1-103

c/o 144 Pavilion Street

Summerville, South Carolina 29483

Phone: 843-437-7901

AFFIDAVIT

STATE OF South Carolina)
COUNTY OF Dorchester)

I, Nelson L Bruce, being domiciled at 144 Pavilion Street, Summerville, SC 29483:

1. Being a Citizen of the State of South Carolina and;
2. Being of the age of Majority, and;
3. Filed the attached Petition for actual or statutory damages and court fees and costs in the District Court of South Carolina, says;
4. I do hereby affirm that the allegations contained therein are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

“Without Prejudice”

Nelson L. Bruce 2-5-2018

Nelson L Bruce, Plaintiff, Propria Persona, Sui Juris

"All Rights Explicitly Reserved and Retained"

U.C.C. 1-207/1-308, 1-103

Address: c/o 144 Pavilion Street, Summerville, SC 29483

Phone: 843-437-7901

NOTORIAL

STATE OF South Carolina)
COUNTY OF Dorchester)

On this day the 5 of February, 2018, before me personally appeared Nelson L Bruce, being identified by a valid South Carolina State Driver's License did take an oath and states that he has read the Petition for Statutory relief, and that the contents are accurate to the best of his knowledge and belief, and signed the documents before

me.

Notary Public Signature:

Date:

Notary Public Print:

Date:

My Commission expires: _____

